Goochland County's Proffer Law Experience

Background

The 2016 Proffer Law resulted in the need to have a data-driven analysis of cash proffers which takes into account the geographic location of new residential development and the public facilities that are designed to address the needs of the citizens in that geographic area of the locality. The benefit of the geographic analysis is, for instance, a proposed development in the eastern region of Goochland County would not include any proffer amount designed to address an identified need for a community park in the western area of the county.

In addition, the 2016 Proffer Law initiated a requirement to establish the "existing public facility capacity" of localities' public facilities (schools, roads, parks, and public safety facilities). In response to the 2016 Proffer Law, the Goochland County Board of Supervisors adopted a new 25-year Capital Improvement Plan, updated its public facility data, and adopted a new Capital Impacts Model and new cash proffer policy. Under the 2016 Proffer Law, Goochland's Board of Supervisors had approved six new residential developments in Goochland County, approving a total of 978 new residential units.

In developing and implementing its Capital Impacts Model, Goochland County's staff and Board of Supervisors were confronted with numerous problems that arise under the Proffer Law, principally with the use of the term "existing public facility capacity."

The Proffer Law significantly hinders localities from engaging in sound capital improvement planning because they cannot make plans to accommodate projected growth from approved, but not yet built residential units or from newly approved rezoning cases. This leaves citizens with diminished services – causing too much traffic and overcrowded schools – before new public facility improvements can be funded and undertaken. Localities will routinely be playing "catch up" with demands for services.

Moreover, the situation creates a funding gap between "existing public facility capacity" and the projected impacts from the development of each new residential unit. This use of "existing public facility capacity" not only encourages, but requires new developments to leave unaddressed their full impact on localities' capital facilities; instead, current citizens' taxes must be used to fund capital facilities needed to support new residential growth.

Further, the "existing public facility capacity" results in inequities for developers. The last few rezoning proposals approved before a locality's high school reaches 100% capacity will not contribute anything to fund additional high school capacity, no matter how many high school students they will generate. However, the first development seeking approval after the current high school reaches capacity will be faced with the cost of a new high school as one of its impacts. For example, in Goochland, the recently approved developments contributed nothing to fund the addition of high school capacity because the high school is at 91% capacity. But next year, if the high school's enrollment figures grow such that it is at 101% capacity, then even a relatively small development of 30 new residential lots will be faced with addressing the locality's need for funding a new high school, or at least an addition.

The specific problems that arise due to the limitation of using "existing public facility capacity" to determine capital impacts of new residential development are detailed, with examples, in the following sections.

Problems with the Proffer Law

There are several problems that came into existence with the 2016 Proffer Law. These problems result in localities being unable to appropriately plan and fund public facility capital improvements to meet the needs of their growing populations. Moreover, the Proffer Law necessarily creates a funding gap between the cost of providing services to accommodate new residential growth and the amount of proffers offered by new developments. These difficulties are more specifically described below.

Problem 1 – Poor Capital Facility Planning

The natural outcome of having to use "existing public facility capacity" is that a locality is prevented from establishing its need for additional public facility capacity until its existing public facilities are at 100% capacity. So, for instance, roads are not determined to be at "capacity" until they degrade so much from traffic volumes that their Level of Service becomes poor or failing. Similarly, each school has to fill every seat before the locality can change its capital impacts model to reflect its financial need for an addition or a new school.

Schools track the number of students at each grade level which allows them to anticipate their needs for additional capacity as larger classes in the lower grades matriculate into the higher grades; however, they are unable, under the Proffer Law, to count those larger classes toward a need for additional capacity until the students actually matriculate into the school and bring it to capacity or, more likely, overcapacity.

Waiting until a capital facility is full or reaches a failing level of service to begin funding improvements is completely contrary to good capital facility management and planning. It will inevitably lead to public facilities being significantly overcrowded before funding for additional capacity can be collected and the capacity actually built.

Problem 2 – Limited to Construction of Capacity

The construction of new residential units in a locality drives the need for capital investments that are not generated by construction. For instance, to maintain the same level of service, Goochland will need to add additional Sheriff's deputies to its workforce as new residential units are built, but the County facilities can accommodate additional deputies without additional construction since deputies spend most of their time on the road. Adding deputies does involve capital costs, though, because additional vehicles and equipment are required; however, the capital costs of the new vehicles and equipment are not recoverable under the Proffer Law.

Other unrecognized capital expenses impacted by the increased population of new residential development includes Fire & EMS apparatus, additional buses, books, desks, and computers to accommodate a greater number of students in existing school buildings, or additional volumes of books to existing libraries, to name only a few. All of these are valid capital costs caused by increased residential development, but not captured in the Proffer Law calculation.

Problem 3 – Physical or Functional Capacity

The Proffer Law doesn't make it clear whether "capacity" refers to physical capacity or functional capacity. Physical capacity might be, for instance, the number of persons allowed to occupy each room under the building code, while functional capacity takes into account how the facility works and its ability to accomplish its purpose.

A practical example of the difference is a high school having a certain building code occupancy capacity (i.e. classrooms rated to have 35 occupants) and a lower functional capacity (i.e. the high school standards of quality require an average student-teacher ratio of 25 to 1). Certainly, citizens do not want schools to cram 34 students and a teacher into each classroom because that is the room's physical capacity. Moreover, some classes have a different standard of quality, such as the 20 to 1 ratio for career and technical education classes. And some classes have a lower student demand – enough interest to offer the class, but not enough to reach the maximum 25 student enrollment, particularly for many advanced or upper level electives (e.g. AP Chemistry, Jazz Choir, or dual enrollment classes).

Without clarification that capacity refers to functional capacity rather than anticipated capacity, a school has to balance its desire to offer excellent and advanced electives to enhance its students' educational opportunities with offering classes that will "fill" a classroom to its capacity.

Problem 4 – "Existing Public Facility Capacity"

The most significant problem in the Proffer Law is that the "existing public facility capacity" metric requires the locality to use a static capacity number that is based on actual occupancy of a facility today and which doesn't take into account any planning for additional students. For discussion purposes, data regarding Goochland High School (GHS) will be used.

GHS Existing Capacity:
The 2018 "existing public facility capacity" of Goochland High School uses enrollment of 838 students and functional capacity of 916 students, resulting in 78 "empty" seats and an existing capacity of 91%.

> **Existing Capacity:**
> 916 student functional capacity – 838 current enrollment = 78 "empty" seats
> 838 current enrollment/916 student functional capacity = **91% capacity**

What circumstances effect the high school's actual capacity?

A. In order to better prepare its students for higher education, Goochland High School has decided to offer AP Chemistry, and dual enrollment classes, but those classes have fewer students per classroom than the average 25 to 1 student-teacher ratio; accordingly, GHS will decrease its functional capacity by 20 students next year despite no change in its bricks and mortar.

> **Upcoming Curriculum Planning:**
> 916 student functional capacity – 20 seat functional capacity loss = 896 functional capacity
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> 896 student functional capacity – 838 current enrollment = 58 "empty" seats
> 838 current enrollment/896 functional capacity = **94% capacity**

B. In Goochland Middle School's 8th grade class, there are significantly more students than in the senior class at the high school today, so there will be more students in high school next year.

Upcoming Student Planning:
916 student functional capacity
838 current enrollment + 35 add'l 8th graders = 873 expected students next year

916 functional capacity – 873 projected students = 43 "empty" seats
873 projected students/916 functional capacity = **95% capacity**

C. Since July 2016, Goochland has approved 402 new non-age-restricted new residential units, anticipated to generate an additional 48 high school students. As each developer's case was considered, the data presented continued to be that the high school was at 91% capacity, but each development approved is going to generate new high school students and reduce the high school's capacity.

Recently Approved Developments:
402 new residential units x 0.12 avg HS student generation rate = 48 projected new students
838 current enrollment + 48 projected students = 886 students

916 student functional capacity – 886 projected students = 30 "empty" seats
886 projected students/916 functional capacity = **97% capacity**

D. Like other communities, Goochland has an inventory of zoned but unbuilt residential lots. Goochland has 3,191 of these lots. Using Goochland's average high school student generation rate, the homes built on those lots will likely generate 383 high school students who are unaccounted for in GHS's "existing public facility capacity."

Zoned Lot Inventory:
3,191 zoned but unbuilt units x 0.12 avg HS student generation = 383 projected new students
838 current enrollment + 383 projected = 1,221 students

1,221 projected students/916 functional capacity = **133% capacity**

To engage in effective capital planning, localities need to be able to take into account upcoming needs that are reasonably likely to occur, such as changes to the functional capacity of the building, the size of upcoming student classes, and the number of projected students from the zoned lot inventory. Consideration of all of these needs results in a **"Committed Capacity."**

Committed Capacity:

Students	Capacity
838 student current enrollment	916 student functional capacity
+ 35 add'l 8th graders	– 20 seat functional capacity loss
+ 48 recently approved cases	896 functional capacity
+ 383 zoned lot inventory	
1,304 projected students	

1,304 projected students/ 896 functional capacity= **145% capacity**

2019 Proffer Amendment

The 2019 Amended Proffer Law did not change the definitions or the parameters for calculating the impacts from new residential development, so it does not correct any of the identified deficiencies other than to allow a locality to tell a developer about these unaddressed impacts and to allow a developer to choose to offer proffers that address them.

Proposed Solutions

Proposal 1 – Committed Capacity with Cap

Though consideration of Committed Capacity leads to better capital facility planning, it is unlikely if not infeasible that all of a localities' zoned lot inventory will be built and occupied at one time.

An appropriate limit on the number of zoned but unbuilt residential units to be included in Committed Capacity is the number of certificates of occupancy (C/O) the locality has issued for residential units in the previous five years. The C/O issuance factor provides a practical limit on the number of new residential units that may realistically be built. Five years is an appropriate time frame to use because it takes into account housing trends and because five years is the minimum length for localities' capital improvement plans.

Goochland has an inventory of 3,191 zoned but unbuilt lots. In the past five years (2013-2017), Goochland issued 1,046 residential certificates of occupancy. Using the average student generation rate, 1,046 new residential units are projected to generate 125 new high school students (1,046 x .12 HS student generation rate = 125 projected students).

Committed Capacity w/ Cap:

Students	Capacity
838 student current enrollment	916 student functional capacity
+ 35 add'l 8th graders	– 20 seat functional capacity loss
+ 125 projected students based on C/Os	896 functional capacity
998 projected student enrollment	

896 functional capacity – 998 projected students = 102 students overcapacity
998 projected students/ 896 functional capacity= **111% capacity**

Proposed definition of "committed public facility capacity" for Virginia Code § 15.2-2303.4:

> A. For purposes of this section, unless the context requires a different meaning:
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> "Committed public facility capacity" is determined by comparing the functional capacity of a locality's public facilities with the use of those facilities by (i) the locality's current population, plus (ii) anticipated future use from residential development that has been approved but not yet constructed, except that the anticipated residential units that can be included in the committed public facility capacity is limited to the number of certificates of occupancy for residential units issued by the locality in the previous five years, and (iii) anticipated projected impacts specifically attributable to the new residential development or new residential use.
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Proposal 2 – Remove Capacity Entirely

This proposal addresses the concerns with "existing public facility capacity" by removing capacity from the Proffer Law.

Although the examples above show the fluctuations that can exist in determining school capacity, at least schools have existing standards to use in determining their physical (pure square feet) or functional (student-teacher ratios) capacities. Similarly, roads have a general acceptable method to determine capacity in the Levels of Service ratings that evaluate the volume of traffic on roadways.

However, localities and developers struggle with the appropriate standards to use in determining the capacity of recreational, fire, or law enforcement facilities. How much parkland is enough for a locality's current population? Does it matter if the locality has park facilities that are a regional draw, like access to a major river? When does a locality reach its capacity for baseball, soccer, or football fields? When can it be established that new residential development causes the need for additional fire apparatus or stations?

Proposal 3 – Include Non-Construction Capital Costs

The definitions should be revised to allow inclusion of all capital costs that increase capacity of public facilities, without the requirement that it relate to construction.

Conclusion

Goochland County has a valuable perspective on the effect of the methodology and calculation of reasonable proffers under the Proffer Law. The continued use of this methodology, especially the "existing public facility capacity", leaves a locality with a funding gap in the demands for additional capacity to meet increased needs for services from residential growth. The Proffer Law requires localities to engage in poor capital facility planning and sets the stage for degraded services to citizens as public facilities reach well over 100% capacity before funding can be obtained to address overcrowded schools or dangerously busy roads.